

1 this is all going on when we're submitting the bids and
2 working on the auction.

3 Q And at this point you had taken up residency in
4 San Mateo?

5 A Yeah. I stayed at a hotel room in San Bruno, sort
6 of a hotel suites kind of thing.

7 Q Did there come a time where Mr. Breen also took a
8 leave of absence from Unicom and from Romulus?

9 A When we -- from the moment that we were presented
10 with the independent counsel's report, and what it said
11 there, I and other directors were of the impression that we
12 needed -- that Mr. Breen also needed to be out, to take a
13 leave of absence.

14 However, he was very valuable to us, to the
15 company, in the auction. Especially the western markets, he
16 knows them like the palm of his hand, back of -- how do you
17 say it in English? The back of your hand. In Spanish, we
18 say the palm of your hand. In English, you say the back of
19 your hand.

20 And he was -- he was very -- he was valuable for
21 us. You know, he had all this -- he had slept on it, and
22 had breakfast on it, on all the POPS markets, POPS
23 concentration, everything, all these different variables
24 that are needed in order to make a business plan work vis-a-
25 vis the price per POP we are paying, and he had all that in

1 some loose ends.

2 BY MR. WEBER:

3 Q When you spoke to Ms. Hamilton on February 6th,
4 did she make any statement about why she left the company,
5 why she no longer works there?

6 A Yes.

7 Q What did she say?

8 A She didn't want to -- she didn't want to be
9 involved in any sort of what she believed could have been
10 perjury to the FCC.

11 Q And what was your opinion of her demeanor or the
12 way the call went? Did you find it to be credible?

13 A Credible, very calm under the circumstances, and
14 she just wanted me, and I think she just wanted to help
15 because she emphasized, "You're not going to get the truth
16 that way, with Price Waterhouse, just with an
17 investigation."

18 Q Did she say what she meant by she didn't know
19 which side you were on? deposition transcript
otherwise true and accurate

20 A Yeah, because I asked her, "What made you believe
21 that? What made you doubt that?"

22 And she said, "Well, I just read a letter, an
23 invitation to dinner from Fred Martinez to Mr. Easton a few
24 days before via letter." And she said, "Well, since you are
25 so close to Mr. Martinez, then, you know, maybe you're" --

1 Q Did you have conversations without Mr. Easton
2 being a part of them with the Wilkinson Barker firm after
3 February 6th about whether Mr. Easton had lied to them as
4 well?

5 A We had conversations afterwards. I'm pretty sure
6 that came up, yes.

7 Q Did they ever express any concern that they had
8 made filings to the Commission based upon what Mr. Easton
9 had told them --

10 A Yes.

11 Q I'm sorry, go ahead.

12 A Yes, they were very energetic about that, and as I
13 mentioned, Mr. Lee Knauer himself got involved and was very
14 upset about what had happened.

15 Q At the February 19th meeting, when you first
16 raised a motion to have Mr. Easton removed, can you recall
17 if Mr. Breen had any response to that motion?

18 A No. He was on the phone. He wasn't present. He
19 was on the speaker phone. But he was quiet. He didn't say
20 anything.

21 Q Now, you mentioned a few different times where Mr.
22 Breen was quiet. Is that his typical demeanor to be quiet
23 at board meetings or does he typically participate on most
24 issues more fully?

25 A I would say -- I would say he would be more quiet,

1 yes. And then there would be points in which he would
2 participate, but I would say he would be quiet.

3 Q So it's not unusual for him to be quiet?

4 A No. Quiet, no. Quiet, it's not unusual for him
5 to be quiet.

6 MR. WEBER: Okay, thank you. That's all the
7 questions I have.

8 THE WITNESS: Thank you.

9 MR. WEBER: Thank you for your time.

10 THE WITNESS: Okay, I appreciate it.

11 MR. WEBER: Off the record.

12 (Whereupon, at approximately 11:25 a.m., the
13 deposition in the above-entitled matter was adjourned.)

14 I have read the foregoing pages 1 through 54, and
15 they are a true and accurate record of my
16 testimony therein recorded, and any changes and/or
17 corrections appear on the attached errata sheet
18 signed by me.

19

20 _____
JAVIER O. LAMOSO

21 Subscribed and sworn to before me

22 this _____ day of February, 1989

23 _____

24 Notary Public

25 My Commission expires: _____

FEDERAL COMMUNICATIONS COMMISSION

IN RE:)	
APPLICATIONS OF WESTEL SAMOA,)	
INC. FOR BROADBAND BLOCK C)	WT Docket No. 97-199
PERSONAL COMMUNICATIONS)	File No. 00560-CW-L-96
SYSTEMS FACILITIES)	
)	File Nos. 00129-CW-L-97
AND)	00862-CW-L-97
)	00863-CW-L-97
WESTEL, L. P.)	00864-CW-L-97
FOR BROADBAND BLOCK F PERSONAL)	00865-CW-L-97
COMMUNICATIONS SYSTEMS)	00866-CW-L-97
FACILITIES)	

Deposition of: LAWRENCE J. MOVSHIN

Pages: 1 through 61

Place: Washington, D.C.

Date: November 25, 1997

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1 MR. WEBER: Oh, right. I am sorry. I meant to
2 ask that.

3 BY MR. WEBER:

4 Q Your appearance today is from a subpoena, correct?

5 A Yes. I received the subpoena last Thursday to
6 appear this afternoon in this matter.

7 Q The subpoena was signed by Judge Steinberg of this
8 proceeding?

9 A Yes, on the twenty-first of November.

10 Q Thank you.

11 In January of 1996, did the law firm of Wilkinson,
12 Barker, Knauer and Quinn represent a client by the name of
13 PCS 2000 L.P.?

14 A Yes, we did.

15 Q Is that client now known by the name of ClearComm?

16 A I believe that's correct, yes.

17 MR. CARROCCIO: Excuse me. I believe that is
18 ClearComm, L.P.

19 MR. WEBER: Thank you.

20 BY MR. WEBER:

21 Q On January 23, 1996, did it come to your knowledge
22 that PCS 2000 entered an erroneous bid in the Commission's C
23 Block Option?

1 A Yes.

2 Q How did that come to your knowledge?

3 MR. TOLLIN: What dates are we talking about now?

4 MR. WEBER: January 23, 1996.

5 THE WITNESS: I arrived at my office at around
6 6:00 p.m., returning from a trip out of town. I walked into
7 the offices of one of my partners and was told that they had
8 learned that PCS 2000 had entered a substantially erroneous
9 bid.

10 BY MR. WEBER:

11 Q Who is this partner?

12 A I believe there was Kathy Zachem, Andy Tollin and
13 Mike Sullivan were in the room.

14 Q Prior to this point, had you performed any tasks
15 in representation of PCS 2000?

16 A Yes.

17 Q Were you the primary attorney in the
18 representation of PCS 2000?

19 A I was one of two primary attorneys.

20 Q Was Mr. Sullivan the other?

21 A Yes.

22 Q On January 23, 1996 when you were informed there
23 was an erroneous bid, were you informed about how this

1 bidding error occurred?

2 A Yes.

3 Q What were you told?

4 A I was told that the -- a bid had been placed.
5 They weren't sure exactly how the mistake had been made. I
6 was given a general overview of how the process occurred and
7 that somewhere between the time the bid was prepared and the
8 time the bid showed up, it was not the right number.

9 Q At this point, was there any speculation that the
10 bid error may have been caused on the FCC's side?

11 A I think there was speculation that it might have
12 been. I think the general reaction of the -- my general
13 reaction was that it was insignificant as to how it had
14 occurred. It was more important that it occurred and that
15 we correct it.

16 MR. TOLLIN: Can we just clarify? Speculation by
17 whom to whom?

18 BY MR. WEBER:

19 Q In the discussions about the bidding error, did
20 any of the partners discuss the possibility that it may have
21 been the FCC's fault?

22 A None of my partners, no.

23 I am sorry. I was referring to a conversation

1 A I don't remember whether he was a director or not.
2 I -- I know he was an officer and he was the chairman, but I
3 don't know that he was a -- a director.

4 Q Was he at the meeting?

5 A Yes.

6 Q And --

7 MR. TOLLIN: Did you say Reiss was at the meeting?

8 THE WITNESS: I -- I can't recall.

9 MR. TOLLIN: Because I thought you just said
10 "maybe."

11 THE WITNESS: I said maybe.

12 You were asking about Mr. Easton.

13 MR. TOLLIN: Oh, Easton, I am sorry.

14 BY MR. WEBER:

15 Q And Mr. Breen was at this meeting?

16 A Yes.

17 Q Was this a regularly scheduled board meeting?

18 A I don't know.

19 Q You do not know if it was called because of the
20 bidding error?

21 A I don't -- I don't recall.

22 Q Was the bidding error discussed at this board
23 meeting?

1 A Yes.

2 Q Were other topics discussed?

3 A To a very minor degree during my portion. I
4 actually left after the luncheon to get back home and I
5 think the meeting may have gotten on other matters.

6 Q Who presided over the meeting?

7 A Fred Martinez.

8 Q Did he lead the discussion regarding the bidding
9 error?

10 A When you -- I'm not sure what you mean by "lead."

11 Q Well, did anybody more or less assume control when
12 the topic of the bidding error came up?

13 A Probably I did with Mr. Easton and Mr. Martinez.

14 Q Can you describe for us the chain of events during
15 this board meeting?

16 A The -- it was called to order. There was some
17 preliminary discussions. We then described -- I think I
18 described generally the status of the matter. Described the
19 rules relating to bid withdrawals, bid withdrawal penalties.
20 Described the general overview of what was likely to occur
21 given the size of the mistake, the obviousness of it, the
22 impact that it would have on the company. And then a
23 general proposed approach that we were going to recommend,

1 that we would be recommending in terms of moving to the FCC
2 quickly, making it clear as much as we could what the facts
3 were, asking for their -- a waiver and their understanding
4 of the obvious severity of the problem. And then Mr. Easton
5 was asked to describe, to the best of his knowledge, what --
6 what had happened, the facts surrounding it, so the board
7 could make a reasoned judgment as to what they wanted the
8 company to do.

9 Q What did Mr. Easton say he believed happened?

10 A He started by describing his concerns about the
11 mistake that had been made in the -- he analogized it to
12 when he was at NASA, putting his finger on the wrong button
13 and destroying the rocket rather than hitting the -- the
14 booster. But he had obviously hit the wrong button and
15 seemed quite disturbed about it.

16 He then went on to describe, as best I can recall,
17 the process whereby the bids were prepared. One set of
18 computers were uploaded into a separate set of computers
19 that were on-line, were reviewed. In this particular
20 instance, they had -- well, they often prepared the bids
21 during the evening before. I think because Quentin was out
22 of town and Terry had been working late the night before,
23 they had waited till the next morning. They were rushed a

1 little bit, as I -- as I recall.

2 They described preparing the bids, loading them
3 into the on-line computer, determining that they were not
4 within the eligibility parameters that they had established,
5 making some changes on-line or in the so-called on-line
6 computer to bring the bids to within the eligibility
7 requirements that they wanted to make, sending the bids.
8 They then would normally get a print-out but the printers
9 were jammed or were off-line or were not working adequately.
10 They -- and then he went back to his own computer to correct
11 the records as to what was -- what the corrections that had
12 been made on-line, something they don't -- didn't like to
13 do, but they were out of time. And then later on realizing,
14 after -- after the bid withdrawal process and the final bids
15 were published, those were downloaded from the FCC and they
16 realized the mistake. He didn't appreciate where the
17 mistake had been made. He called the FCC to see whether it
18 was their fault since he was reasonably certain that they
19 had made the right bid. The FCC apparently had been -- had
20 told him that it wasn't their fault. They then went back
21 and realized that, no, it had been some human error.

22 He believed it was -- the error had been made by
23 the keystroker who was instroking the corrections. He

1 couldn't be sure. And, as he said, he obviously had pushed
2 the button and blown up the rocket and he was terribly
3 sorry. He was, you know, he was willing to do whatever it
4 took to make it right, including going to Washington to
5 plead his case. And short of not being able to determine
6 entirely what was going on, he had not been able to contact
7 his assistant -- I think her name is Cynthia. They had made
8 -- he said he had made efforts but had been unable to do so.
9 She had not come back to the office, according to -- to him,
10 and therefore they could have no way of knowing exactly
11 where the mistake was. But it was obviously made somewhere
12 in the process of putting together a bid too quickly. They
13 were going to make sure that this didn't happen again and
14 they would do everything the night before. He was sorry and
15 he hoped the FCC would understand.

16 Q When you said he stated the fault may have lied in
17 the keystroker who was inputting the bids, who was he
18 referring to as being the keystroker, himself or Cynthia
19 Hamilton?

20 A Well, I think at that point he was referring to it
21 may have been Cynthia Hamilton. But he had -- he was also
22 acknowledging that it could have been anywhere in the
23 process. He could -- he also said they just couldn't figure

1 it out. There was no -- no way to figure out where the
2 mistake had been made. It was a very plausible explanation.

3 Q Did Mr. Breen have any input into the matter when
4 discussing the bidding error?

5 A No. Actually, he was not paying attention at the
6 time.

7 Q Why do you say he was not paying attention?

8 A At one point, I looked over and he was actually
9 snoring. He was dozing.

10 Q Did you --

11 MR. TOLLIN: I do not know if that is good or bad.

12 BY MR. WEBER:

13 Q -- regularly attend board meetings of the Unicom
14 board?

15 A I probably attended two or three during the entire
16 process, usually they involved -- around the time when FCC
17 eligibility matters, structuring matters, or application
18 matters were involved.

19 Q Would you say Mr. Breen's level of interest at
20 this board meeting of the twenty-seventh was more or less or
21 was consistent with his level of interest at all of the
22 board meetings you did attend?

23 A He was -- I mean, whenever he was involved in,

1 they were matters on which he otherwise wasn't aware or
2 which were of significance to him, he was -- he was, as you
3 would expect, an officer of the company actively involved.
4 In matters that were of less interest to him or matters on
5 which he wasn't particularly involved, he was -- he was like
6 any other person attending a meeting. Mind probably
7 wandered. He was an active participant, though.

8 Q Did he state at any point during this Saturday
9 board meeting that he had heard allegations that Mr. Easton
10 may have lied to the Commission?

11 A No.

12 Q You stated Ms. Milstein was in attendance at this
13 meeting?

14 A I believe she was, yes.

15 Q Did she, at any point, state that she had heard
16 allegations that Mr. Easton had lied to the Commission?

17 A No.

18 Q When you discussed the state of events or I forget
19 how you termed it, but how events stood for the company at
20 that time, what did you tell them?

21 A As best I can recall, we had told them that the --
22 it didn't matter from the perspective of making the case
23 where the mistake had been made. The fact is, it was an

1 obvious mistake. It appeared to be an honest mistake.
2 There was no appearance that it was done for purposes of
3 messing up the bidding, interfering with the bidding
4 process. That the -- all the Commission's rules relating to
5 bid withdrawal and bid processing were designed to -- to
6 maintain the sanctimony of the auction process and there was
7 no obvious rule or situation that -- that covered this --
8 this clear mistake. That in other situations where the
9 Commission was faced with clear mistakes, they were
10 typically reasonable in dealing with the process. That we
11 had to get in very quickly, make it clear what we knew and
12 how the mistake probably was made. That it really didn't
13 matter whether -- in our mind, it didn't matter whether, in
14 fact, it had been a transmission error. That because it was
15 such an obvious mistake, it wasn't a matter of one eight one
16 eight versus one eight oh oh. This was a clear mistake. No
17 one could question that someone didn't expect to bid \$180
18 million when everything else was in the \$14 to 18 million
19 range. That kind of bidding was obvious. Therefore, we
20 should focus less on who shot John and more on how did it
21 happen, how did our process work, why was it possible and
22 ask simply that they recognize this problem and -- and use
23 their discretion to be merciful in waiving the penalty and -

1 - and allowing us to -- and do so quickly because, indeed,
2 the overhang of the bidding -- the potential penalty was
3 going to impact our ability to bid further. And the -- we
4 had enough facts -- we felt we had enough facts as to how it
5 probably could happen and how the process would work to
6 figure that it probably was human error and that that's what
7 we should suggest. That we thought, from what we could
8 tell, it was something we'd never know exactly what had
9 happened but that we should go in and effectively ask for
10 mercy in view of this obvious mistake.

11 Q By this time, there had been a waiver request
12 filed on behalf of PCS 2000, correct?

13 A I think -- I think it was done -- actually done --
14 as I was going to the plane, they were making -- filing that
15 Friday night.

16 Q Was the board informed of the fact that this
17 waiver request had been filed?

18 A Yes. Actually, that had been authorized by the
19 executive officers.

20 Q Prior to the filing of the waiver request, were
21 you aware that there were press reports in which it was
22 reported that the company was blaming the FCC for the
23 bidding error?

1 A I believe I was.

2 Q Was this discussed at all during that board
3 meeting?

4 A It was discussed during that board meeting and
5 prior to that. Our advice was for the company not to
6 respond to the press. We -- we assured them that the press
7 was not their friend. That the case wasn't going to be pled
8 in the -- in the press. That wasn't the way we thought they
9 should be responding. And they took our advice, I think. I
10 don't think there were any further press reports. And the
11 board was given the same advice and agreed that the matter
12 was one for the FCC and the company to deal with, not for
13 the press. And I don't -- I believe that no further
14 statements like that were made to the press.

15 Q Was there actually a vote at the board meeting to
16 agree on that?

17 A Relating to the press?

18 Q Relating to not speaking to the press.

19 A I don't believe there was a specific board vote.
20 It was part of the whole decision to accept our advice on
21 these matters.

22 Q Were there board votes on anything while you were
23 there?

1 A I don't -- if -- I don't believe there was a
2 formal vote -- board vote. I believe there was unanimity of
3 purpose to request the FCC's forgiveness and mercy.

4 Q Although at that point, I mean, essentially the
5 waiver request was your attempt to ask the FCC for
6 forgiveness, correct?

7 A Well, I think, though, that in addition they
8 were -- they authorized -- they were authorizing Mr.
9 Martinez and Mr. LaMoso and I think those are the only two
10 were actually authorized and directed to meet with the FCC
11 as quickly as possible to -- to make it clear that the
12 company was -- understood the mistake and wanted to correct
13 it as quickly as possible. But the board was ratifying and
14 making it clear that that was the position.

15 Q Was that the only matter that was ratified while
16 you were in attendance?

17 A I believe. There may have been some housekeeping
18 matters, but nothing of significance.

19 Q Were there any discussions at that meeting about
20 Mr. Easton withdrawing as one of the authorized bidders?

21 A I don't recall such discussions, no.

22 Q Do you recall if there were any discussions about
23 Mr. Breen withdrawing as an authorized bidder?

1 A Yes, I did.

2 Q Did you have discussions with anybody in PCS 2000
3 after reviewing it?

4 A Yes, I did.

5 Q Who did you have discussions with?

6 A Javier LaMoso, Fred Martinez, Richard Reiss, from
7 within the company. Larry O'Dell also.

8 Q Could you characterize how they felt about the
9 report?

10 A I can tell you what they told me.

11 Q What did they tell you?

12 A I think they were -- they were pleased that it was
13 as complete as it was. I think they were satisfied that --
14 that the investigator had done a thorough job. That all of
15 the folks who might have information had been contacted.
16 And that whatever technical information could be available
17 was made available. I think they were disappointed in the -
18 - in the nature of the findings. I think, based on the
19 various conversations that we had had among counsel and the
20 client, we came to the conclusion that it, at most,
21 confirmed the facts. It didn't change the position that the
22 company was taking, which was that a mistake was made. A
23 mistake that couldn't have -- you know, that was, in fact,

1 human error. And that, notwithstanding the aftermath of the
2 mistake and how it was presented to the Commission, which
3 was unfortunate, that the matter that was most significant,
4 which was the waiver, the company's -- from the company's
5 perspective, the facts hadn't changed. A mistake had
6 clearly been made. It had been a human error mistake and it
7 was obvious and significant and -- and hopefully one that
8 the Commission would look kindly in relieving.

9 Q Were they concerned that the report did
10 specifically conclude that misrepresentations were made to
11 the FCC?

12 A They were -- they were clearly concerned. They
13 were concerned that that's not the -- that is not the manner
14 in which they had intended -- anticipated doing business and
15 certainly not the manner in which they intended to continue
16 doing business. And their primary concern was in
17 determining what the FCC would deem appropriate in terms of
18 how draconian the response would be. Clearly, they were
19 concerned about having Mr. Easton continue in any capacity
20 and -- and they were trying to determine what was the best
21 course of action given that he had a management role and he
22 also had family who had an ownership -- a substantial
23 ownership role and he had relations with others who had a

1 Q Did you have any impression as to when those
2 documents were created timewise in relation to the
3 submission of the bids by PCS 2000?

4 A At that time, I don't remember specifically when I
5 thought they were done, no.

6 Q You indicated there was another discussion with
7 Mr. Easton, or there were several discussions with Mr.
8 Easton, on January 24, 1996?

9 A Right.

10 Q And that among the subjects of those conversations
11 were the confirmation of the bid withdrawal?

12 A Right.

13 Q Also, that you were seeking more information on
14 what had taken place in the bidding process?

15 A Right.

16 Q Was there confusion or uncertainty as to what had
17 happened in the bidding process?

18 A There was still confusion and uncertainty as to
19 exactly how the error had been made, yes.

20 Q Do you know when that confusion and uncertainty
21 was resolved?

22 A I -- I don't know that it's ever been resolved,
23 but it certainly wasn't resolved at that point.

1 Q In your mind, is it still unresolved as of this
2 date?

3 MR. TOLLIN: Facts. You can testify to facts.
4 Can we go off the record for a second?

5 MR. CARROCCIO: Sure.

6 (Discussion held off the record.)

7 THE WITNESS: I still don't know with absolute
8 certainty exactly what happened.

9 BY MR. CARROCCIO:

10 Q You indicated, I believe, in your previous
11 testimony today that you had reviewed a declaration prepared
12 for Mr. Easton and possibly made minor edits to it?

13 A Yes, that's correct.

14 Q Did you also review any of the drafts of the
15 waiver request that was ultimately filed with the Federal
16 Communications Commission on --

17 A Yes.

18 Q -- the twenty-sixth?

19 A Yes.

20 MR. TOLLIN: I think he has already testified to
21 that.

22 BY MR. CARROCCIO:

23 Q In reviewing any of those documents, did you find

1 any of them to be inaccurate?

2 A Based on what I knew at the time, no.

3 Q Did you find any of them to be less than candid?

4 A They -- they were fully candid as to the
5 information we had at the time.

6 Q Mr. Movshin, first of all, you attended a board
7 meeting of Unicom Corporation on January 27, 1996?

8 A That's correct.

9 Q That was a Saturday?

10 A Yes.

11 Q Do you know if Unicom, in setting the agenda for
12 that meeting, made provision to get your presentation taken
13 care of early in the meeting?

14 A Yes, it did.

15 Q Did it do the same thing with regard to the
16 presentation of Mr. Frank Goldstein?

17 A I don't recall.

18 Q In describing the bidding process and how the
19 error could possibly have been made, I believe you indicated
20 that Mr. Easton indicated the error could have been made
21 anywhere in the process?

22 MR. TOLLIN: Where and when are we talking about?

23 BY MR. CARROCCIO: